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Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo

Note verbale dated 13 May 2004 from the Permanent Mission of Brazil to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Brazil to the United Nations presents its compliments to the Secretariat and, pursuant to Security Council resolution 1533 (2004), has the honour to enclose herewith the report requested in paragraph 9 of the above-mentioned resolution (see annex).

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Annex to the note verbale dated 13 May 2004 from the Permanent Mission of Brazil to the United Nations addressed to the Chairman of the Committee

Report to the United Nations Sanctions Committee established by resolution 1533 (2004)

Contents

		Page
1.	Introduction	3
2.	Conventional weapons	3
	2.1 Controls preventing access to weapons	3
	2.2 Import and export control system	5
	2.3 Goods risk assessment on borders	6
	2.4 Access to information	7
	2.5 Law enforcement/illegal trafficking	7
List of acronyms		8

1. INTRODUCTION

The Government of the Federative Republic of Brazil has provided internal measures for compliance with the sanctions regime established in accordance with Security Council Resolutions 1493 (2003) and 1533 (2004).

Resolution 1493 (2003) was introduced into the national legal framework by Decree 4822 of 28 August 2003. Its first article states that "the Brazilian authorities must comply with the provisions of Resolution 1493 (2003), adopted by the United Nations Security Council on 28 July 2003, attached hereto, according to their duties and powers".

Brazil has an effective system for the control of the export of arms, which comprises strict rules and competent federal institutions in charge of controlling foreign trade in weapons, sensitive goods and dangerous products.

The Ministry of Defence, the Ministry of External Relations, the Ministry of Justice and the Ministry of Science and Technology of Brazil all play a role in the system. Trade in arms can take place legally only when authorised by these Ministries, according to their specific competences. Therefore, the export or import of weapons, training, assistance or advice related to military activities, to all foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and of Ituri, and to groups not party to the Global and All-inclusive agreement, in the Democratic Republic of Congo, are illegal in Brazil.

2. CONVENTIONAL WEAPONS

2.1 Controls preventing access to weapons

Brazil has put in place mechanisms to deny access to weapons to non-authorised parties, through legislation, regulations, and administrative procedures. There are two main pieces of legislation which establish norms for the proper use and handling of weapons in Brazil in its various aspects:

- **Act 10826/03**

Act 10826 of 22 December 2003 lays down strict norms and regulations on the registering, acquisition, possession and commercialisation of weapons, in particular those for individual use. It also confers more rigorous powers to the National Weapons System (SINARM) operated by the Federal Police Department under the Ministry of Justice. Based on this new law, also known as the "Disarmament Statute", only the Federal Police will be able to issue permits for the use of weapons. State police will no longer have that prerogative. Only security agencies, the police, the armed forces and individuals duly authorised will be allowed to carry weapons. Private persons must prove that they are involved in highly dangerous professional activities or have suffered reiterated threats to their physical integrity in order to obtain a permit.

- **Decree 3665/00**

Decree 3665/00 of 20 November 2000 regards the supervision of activities carried out by individuals and legal persons (weapon stores/distributors) which involve products controlled by the Army. Those activities include, among others, the manufacturing, recovery, maintenance, industrial utilisation and commercialisation of weapons, usually those of high calibre and restricted use. It also sets strict controls for preventing the manufacture, stockpiling, transfer and possession of unmarked or inadequately marked firearms, plastic explosives and other explosives and their precursors.

Decree 3665/00 and its complementary rules (*Portarias*) also specify standards for the appropriate marking of weapons, which must be profound enough – according to technical criteria – so as to make it difficult to obliterate or remove them. Whenever unmarked or inadequately marked firearms originating overseas are seized in Brazil, the Federal Police Department proceeds to their prompt destruction, unless they serve as evidence for crime investigations. Aside from legislative measures, DPF carries out police intelligence-gathering operations aimed at identifying criminal organisations and illicit trafficking, as well as systematic crime-combating routine activities.

The Directorate for the Supervision of Controlled Products (DFPC) subordinated to the Army Command under the Ministry of Defence is the main body in charge of implementing the provisions set forth by Decree 3665/00.

Decree 3665 of 20 November 2000 also updated rules regarding the inspection of goods under the control of the Ministry of Defence (R – 105). The first Annex to Decree 3665/00 outlines its main objectives; definitions; general goals to be achieved through the inspection scheme; general rules on controlled goods and services related thereto; entities involved in the inspection scheme; responsibilities, powers and structure of the entities in charge of inspection; procedures related to the national registry;[1] conditions and requirements with respect to industries that produce controlled goods; inspection of national activities: production, packing, stockpiling, storage, safety, inspection, acquisition, transport, exhibition, transit[2] of and trade in controlled goods; foreign trade inspection: exportation, importation, customs procedures; administrative proceedings and penalties for those who do not comply with the rules set by the Decree referred to; destruction and seizure of controlled goods.

[1] Article 39 of the Annex to Decree 3665/00 states that "register is compulsory for natural persons and legal entities, both from the public and private sectors, which produce, give industrial use, store, trade, export, import, handle, transport, keep in proper condition and fix sensitive goods controlled by the Ministry of Defence". Article 40 states that "the natural persons and legal entities, registered or not, which deal with sensitive goods controlled by the Ministry of Defence, are subject to inspection, control and penalties under this Statute and pertinent complementary legislation in force".

[2] Article 165 of the Annex to Decree 3665/00 states that "controlled goods subject to transit inspection shall only transit within the borders of the country after obtaining specific permission from the inspection authorities of the Ministry of Defence through a nationally valid document entitled GT, Annex XXIX".

According to Article 8 of Decree 3665/00, a product is included in the list of products under strict control of the Ministry of Defence if it has the potential to cause destruction or other risk which justifies use restricted to legally authorised natural persons or legal entities with specific technical, moral and psychological competencies in order to assure the safety of the society and country.

Article 9 of Decree 3665/00 establishes specific requirements, such as the issuance of certificates and other documents, generally under the jurisdiction of the Ministry of Defence, in order to authorise manufacture, use, import, export, customs procedures, transit and trade in controlled products.

2.2 Import and Export Control System

Brazil has implemented export and import licensing or authorisation, for the transfer of small and light weapons, their parts and components and ammunition, plastic explosives, and other explosives and their precursors.

Act 9112 of 10 October 1995, entitled "Rules on the Export of Sensitive Goods and Services Directly Linked Thereto", is the main legal basis for Brazil's exports control system. Article 1 provides definitions of "goods for use in times of war", "dual-use goods", "goods for use in the nuclear area", "chemical and biological goods" and lists the services directly linked to these goods which are subject to export controls. Article 2 states that the controlled items are compiled in Lists of Sensitive Goods, which are periodically updated and published in the Federal Government Official Gazette (*Diário Oficial da União*). Article 3 establishes specific licensing procedures. Article 4 establishes an Interministerial Commission on Controlling Exports of Sensitive Goods, under the Office of the President of the Republic, comprising representatives of the federal entities involved in the process of exporting the goods covered by Act 9112/95. Article 5 outlines the main duties and powers of the Commission referred to in Article 4. Articles 6 and 7 specify penalties for export control violations. Article 8 designates the Ministry of Defence as the supervisory authority for all transactions involving sensitive goods and services. Article 9 empowers the Executive branch to regulate all export transactions involving sensitive goods and services. Article 10 states that the law enters into effect on 10 October 1995.

Act 9112/95 and the pertinent presidential decrees associated with joining the Nuclear Suppliers Group and the Missile Technology Control Regime form the legal basis for the "National Policy of Exports of Military Goods" (PNEMEM).

Import licensing and authorisation depends on the approval of the Ministry of Defence. All requests must include comprehensive documentation which is submitted to the approval of the Army Command. If it considers that a request fulfils the requirements, it then approves the import license under the Brazilian Integrated Foreign Trade System (SISCOMEX), a body subordinated to the Ministry of Finance.

After the import request is registered under SISCOMEX, another license is emitted for shipment authorisation. As soon as the merchandise arrives in the country, it is retained for customs clearance, which is implemented though the presence of a certified authority from the Ministry of Defence and another from the Brazilian Customs. The product is therefore verified twice and its content is confronted with the specifications described on the import document.

Export licensing or authorisation also requires fully documented request by the interested party, which must specify the country to which it intends to export and the product itself. If it regards weapons employed by the armed forces, authorisation depends on a joint evaluation by the Ministry of Defence and the Ministry of Foreign Relations. Other weapons (low calibre) are contingent upon Army Command approval. No export is allowed to countries, regions or groups subject to United Nations sanctions regimes.

Registration and checking of the Goods declaration prior to import, export or transit movement are mainly conducted through SISCOMEX. Brazilian Customs, in co-ordination with the Army Command, relies upon SISCOMEX to keep records and ensure the fulfilment of Goods declaration and supporting documents relating to firearms prior to the import and export movement of goods. SISCOMEX has been one of the first world-wide systems to integrate Customs controls at seaports, airports and land borders, allowing for the automatic computerised collection of taxes. The system has been operating since 1994 for exports and since 1997 for imports.

By integrating controls of commercial, administrative, fiscal and currency exchange areas, SISCOMEX has rationalised the use of information and, as a consequence, reduced the need for paper documents. Thus, Goods declaration relating to firearms must be done through electronic licensing under SISCOMEX prior to the import or export. The system checks the information and identifies the license, which has to be corroborated afterwards by physical and on-site checking.

2.3 Goods risk assessment on borders

The Brazilian Customs uses intelligence-based risk management to identify all kinds of frauds, such as those concerning illicit trafficking in drugs and arms. Two assessment approaches are applied: (*i*) objective risk – determined by combining aspects like the nature of the goods, the means of transportation, country of origin and packing method; and (*ii*) subjective risk – estimated by interpreting patterns of behaviour and profiles of intervening agents, such as importers, carriers and brokers.

Procedures for effectively assessing risks include computer crosscutting evaluations, exchange of information between domestic customs units and other national and foreign agencies. Access to WCO Customs Enforcement Network (CEN) has also proven to be a highly effective tool, along with the Brazilian Customs participation in the Regional Customs Intelligence Liaison Office (RILO).

Brazilian Customs has increased its risk assessment capabilities by establishing a Central Intelligence Office and a network intertwining local intelligence officers who work with risk analysis instruments to identify potentially perilous goods and operations.

The international transit of weapons through the Brazilian territory is subject to specific procedures for authorisation laid down by Decree 3665 of 20 November 2000, with the objective of preventing the possibility of weapon deviation schemes. Brazil also has an information exchange mechanism on sources, routes and methods of traders, integrating police and armed forces intelligence agencies. Brazil currently does not allow transit of controlled weapons through its territory.

2.4 Access to information

Brazilian legislation allows no secrecy concerning commercial dealings with firearms and other weapons. The public is granted access to that kind of information without restrictions. Sharing of information with foreign counterparts to enable co-operation in preventing illegal shipments of firearms and other products is encouraged.

2.5 Law enforcement/illegal trafficking

Aside from keeping an updated database system to keep track of legal and illegal firearms, the Federal Police Department carries out joint intelligence operations with other national police forces as well as with foreign counterparts. DPF has established joint mechanisms with neighbouring countries in order to exchange techniques and information on potential arms traffickers.

DPF has also installed special Intelligence Facilities on the borders with neighbouring countries so as to foster co-operation in tracing arms trafficking – among other types of crimes – often with logistical support from the Armed Forces.

Under the auspices of bilateral anti-drugs agreements, the Ministry of Foreign Relations – through the General-Coordinator for Combating Transnational Crimes (COCIT) – organises Anti-Drug meetings on an annual basis with the participation of representatives from several governmental bodies. In those *fora*, the prevention and combating of arms trafficking constitutes one of the main topics of the agenda.

In 2003, DPF established a Directorate of Combat against Organised Crimes (DCOR) in its headquarters, in Brasilia, and included in such Directorate the Division of Combat against the Trafficking in Illicit Weapons (DARM). Besides, Offices of Combat against the Trafficking in Illicit Weapons (DELEARM) were created in every Regional Superintendence, in each one of Brazil's 27 federative states. These units carry out a systematic combat against trafficking in weapons in Brazil by means of co-ordination with several national and international police units and using police intelligence techniques.

LIST OF ACRONYMS

CEN/WCO: Customs Enforcement Network / World Customs Organization;

COCIT: *Coordenação-Geral de Combate aos Ilícitos Transnacionais do Ministério das Relações Exteriores* (General-Coordinator for Combating Transnational Crimes under the Ministry of External Relations);

DCOR: *Diretoria de Combate ao Crime Organizado do Departamento da Polícia Federal* (Directorate of Combat against Organised Crimes under the Federal Police Department);

DFPC: *Diretoria de Fiscalização de Produtos Controlados do Ministério da Defesa* (Directorate for the Supervision of Controlled Products under the Ministry of Defence);

DPF: *Departamento da Polícia Federal do Ministério da Justiça* (Federal Police Department under the Ministry of Justice);

MCT: *Ministério da Ciência e Tecnologia* (Ministry of Science and Technology);

MD: *Ministério da Defesa* (Ministry of Defence);

MRE: *Ministério das Relações Exteriores* (Ministry of External Relations);

PL: *projeto de lei* (draft law);

PNEMEM: *Política Nacional de Exportação de Produtos Militares* (National Policy of Exports of Military Goods);

RILO/WCO: Regional Customs Intelligence Liaison Office / World Customs Organization;

SINARM: *Sistema Nacional de Armas* (National Weapons System);

SISCOMEX: *Sistema Integrado de Comércio Exterior* (Brazilian Integrated Foreign Trade System).